

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

JEREMY DE LOS SANTOS, and  
JOSHUA DE LOS SANTOS,

Plaintiffs,

v.

CV 12-0375 WPL/GBW

CITY OF ROSWELL, NEW MEXICO, et al.,

Defendants.

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE AN AMENDED RESPONSE**

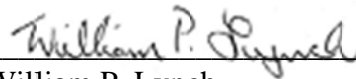
This matter is before me on Jeremy and Joshua De Los Santos' motion to file an amended response to Defendant Barbara Ann Patterson's motion for summary judgment. (Doc. 128.) Paterson filed a motion for summary judgment (Doc. 88), and Plaintiffs filed a response to the motion (Doc. 100) before they knew whether they would prevail on a motion to compel discovery (Doc. 78) that would impact their arguments in opposition to summary judgment. Shortly thereafter, Plaintiffs filed an unopposed motion for an extension of time to file a response. (Doc. 104.) I granted the motion and ordered that if Magistrate Judge Gregory Wormuth granted the motion to compel in whole or in part, or if he permitted additional discovery, Plaintiffs could file an amended response. (Doc. 106 at 1-2.) However, if Judge Wormuth denied the motion, declined to lift the stay of discovery, or did not permit additional discovery, then I would not permit Plaintiffs to file an amended response. (*Id.* at 2.)

Judge Wormuth denied the motion to compel (Doc. 112), and I overruled the objections to the discovery order (Doc. 125) and summarily denied the motion for reconsideration of the

discovery order (Doc. 130). Plaintiffs still seek to file an amended response brief in their present motion, and Defendants oppose this request on the basis that I stated in a previous order that Plaintiffs would only be able to file an amended response if the motion to compel was granted in whole or in part. (Doc. 131; Doc. 132.)

While it is clear that Plaintiffs will not be receiving additional discovery, I will nonetheless grant the motion to amend. Plaintiffs' response brief was written before the Court ruled on the discovery matter, and the brief, as drafted, reflects that uncertainty. In fact, immediately after Plaintiffs filed their response brief, my staff contacted Plaintiffs' counsel and suggested that they withdraw their response until after the Court had ruled on the motion to compel. Inexplicably, Plaintiffs' counsel failed to take this advice and never withdrew the response. I will still permit Plaintiffs to file an amended response brief since I believe it will result in clearer and more relevant legal arguments. **I will rely exclusively on the arguments raised in the amended response**, so Plaintiffs must raise all issues that they wish the Court to address in that motion; I will not consider any arguments or exhibits in the current response brief. Since Plaintiffs need only tailor their existing brief in order to respond to the motion for summary judgment, their response is due no later than **August 9, 2013**. Patterson's reply is due no later than **August 26, 2013**. I will not grant an extension, except in the event of a serious emergency.

IT IS SO ORDERED.

  
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William P. Lynch  
United States Magistrate Judge